

EXHIBIT 11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	17-cv-00939-WHA
UBER TECHNOLOGIES, INC.;)	
OTTOMOTTO, LLC; OTTO TRUCKING LLC,)	
)	
Defendants.)	

HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY

VIDEOTAPED 30(b)(6) DEPOSITION of OTTOMOTTO LLC,

by and through its Designated Representative

ADAM BENTLEY, ESQ.

San Francisco, California

Tuesday, August 22, 2017

Volume I

Reported by:
MARY J. GOFF
CSR No. 13427

Job No. 2684904A

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1 a moment to review it and let me know if you 10:19:22

2 recognize it. 10:19:25

3 A Okay. 10:23:29

4 Q So my question was: Do you recognize this 10:23:30

5 e-mail chain? 10:23:32

6 A I recognize the E-mail chain to the extent 10:23:34

7 that I was a part of this e-mail chain. There are 10:23:40

8 also e-mails included in this e-mail chain that I 10:23:43

9 was not copied on or e-mails that I did not receive. 10:23:46

10 Q Focusing on the e-mails that you were not 10:23:50

11 copied on, have you ever seen them before? 10:23:52

12 A No, I don't believe so. The e-mails that 10:24:04

13 I was not copied on are redacted here, so I don't 10:24:06

14 see what they say; but I don't recognize or recall 10:24:10

15 ever seeing e-mails from these dates with these 10:24:13

16 people. 10:24:17

17 Q Directing your attention to page 9, 10:24:18

18 there's an e-mail from Andrew Glickman to 10:24:19

19 Mr. Sieben, yourself, Lior Ron, and CC'ing 10:24:26

20 Mr. Poetzscher, Jamie Leigh, and Christian Lymn -- 10:24:30

21 Lymn. 10:24:33

22 Do you see that? 10:24:35

23 A Yes. 10:24:37

24 Q Who is Andrew Glickman? 10:24:37

25 A Andrew Glickman is a corporate attorney 10:24:39

1 in-house at Uber. 10:24:42

2 Q And what was his role in the 10:24:46
3 Ottomotto/Uber negotiations? 10:24:47

4 A He was working on the transaction as an 10:24:52
5 in-house corporate attorney at Uber. 10:24:54

6 Q So Mr. Sieben is -- is addressed here. 10:24:56
7 He's an O'Melveny partner at the time? 10:24:58

8 A Correct. 10:25:02

9 Q You were on this. You were an O'Melveny 10:25:02
10 counsel at the time? 10:25:05

11 A Yes. 10:25:05

12 Q Lior Ron is on this. He was Ottomotto's 10:25:06
13 president at the time, correct? 10:25:10

14 A Yes, he was our client and representative 10:25:12
15 of Ottomotto and Otto Trucking. 10:25:14

16 Q And then Mr. -- Mr. Poetzsch was CC'd, 10:25:16
17 and he was in the business -- he was in corporate 10:25:18
18 development at Uber at the time, right? 10:25:23

19 A He -- 10:25:25

20 MR. TAKASHIMA: Objection. I'm going to 10:25:26
21 note that this is all beyond the scope of the 10:25:26
22 30(b)(6) designation. 10:25:28

23 A Yes. 10:25:30

24 MR. TAKASHIMA: You can answer the 10:25:30
25 question. 10:25:30

1	A	Yeah.	10:25:30
2	Q	(BY MR. JUDAH) Who is Jamie Leigh?	10:25:32
3		MR. TAKASHIMA: Objection, beyond the	10:25:34
4		scope.	10:25:34
5	A	Jamie Leigh is -- or at the time she was a	10:25:35
6		corporate partner at Cooley.	10:25:41
7	Q	(BY MR. JUDAH) And who is Christian Lymn?	10:25:44
8		MR. TAKASHIMA: Objection, beyond the	10:25:47
9		scope.	10:25:47
10	A	Christian Lymn is an in-house corporate	10:25:49
11		attorney at Uber.	10:25:52
12	Q	(BY MR. JUDAH) So you see the date of this	10:25:55
13		e-mail is February 6, 2016, right?	10:25:57
14		MR. TAKASHIMA: Objection, beyond the	10:26:00
15		scope.	10:26:00
16	A	Yes.	10:26:01
17	Q	(BY MR. JUDAH) And it says -- Mr. Glickman	10:26:02
18		writes, We will send you a revised indemnity word	10:26:04
19		version markup incorporating the below and any other	10:26:09
20		Uber positions. We hope to get to you tomorrow.	10:26:11
21		Do you see that?	10:26:16
22		MR. TAKASHIMA: Objection, beyond the	10:26:16
23		scope.	10:26:16
24	A	Yes.	10:26:18
25	Q	(BY MR. JUDAH) Do you -- do you	10:26:18

1 remember -- let me ask it this way: Have you ever 10:26:18
2 seen an e-mail mentioning indemnity obligations 10:26:23
3 prior to February 6, 2016. 10:26:30
4 A Do I -- 10:26:34
5 MR. TAKASHIMA: One second. Objection to 10:26:37
6 form. And I'm going to caution you not to divulge 10:26:38
7 any privileged communications, but you can answer 10:26:42
8 the question. 10:26:46
9 A -- I don't recall the dates of all the 10:26:49
10 e-mails that were associated with this deal, so I 10:26:51
11 don't recall if there were e-mails being exchanged 10:26:56
12 between the sides prior to -- you were asking if 10:26:59
13 there were e-mails related to this prior to 10:27:05
14 February 6? 10:27:07
15 Q (BY MR. JUDAH) Yeah, on the topic of 10:27:08
16 indemnification. 10:27:10
17 A So -- 10:27:11
18 MR. TAKASHIMA: Objection, form. 10:27:12
19 A -- there's a February 5 e-mail on this 10:27:13
20 chain relating to indemnification. 10:27:18
21 Q (BY MR. JUDAH) Where is that? 10:27:20
22 A So on page 9, about in the middle where it 10:27:30
23 says, On February 5, 2016, at 5:30 p.m., Andrew 10:27:33
24 Glickman wrote -- and this are -- this is an e-mail 10:27:37
25 relating to the negotiation of the indemnification 10:27:42

1 terms. 10:27:44

2 Q Got it. So how about prior to February 5? 10:27:46

3 Can you recall seeing any e-mails prior to that date 10:27:50

4 of February 5 relating to the subject matter of Uber 10:27:54

5 indemnification of Ottomotto? 10:27:59

6 MR. TAKASHIMA: Again, I caution you not 10:28:03

7 to divulge any privileged communications. 10:28:04

8 A So I don't recall the dates of all the 10:28:06

9 e-mails in this transaction, so I can't tell you 10:28:09

10 right now whether there were e-mails going across 10:28:11

11 the table relating to indemnity prior to February 5. 10:28:14

12 But I can tell you that based on the 10:28:18

13 content of this February 5 e-mail, it's clear to me 10:28:22

14 there had already been substantive discussion on the 10:28:25

15 indemnification construct and terms, given the 10:28:28

16 detail and the terms set forth in -- in this 10:28:33

17 February 5 e-mail from Andrew Glickman. 10:28:35

18 Q (BY MR. JUDAH) The term -- the term -- do 10:28:48

19 you see there's a -- the second kind of underlined 10:28:53

20 section, the February 5 e-mail from Mr. Glickman 10:28:56

21 says, List of Specified Bad Acts." 10:29:00

22 Do you see that? 10:29:04

23 A Yes. 10:29:04

24 Q Do you remember the origin of that term -- 10:29:06

25 MR. TAKASHIMA: Objection. 10:29:10

1 Q (BY MR. JUDAH) -- specifically bad acts? 10:29:10

2 MR. TAKASHIMA: Objection, beyond the 10:29:12

3 scope. 10:29:12

4 A Is -- is your question: What is the 10:29:15

5 origin of the defined term, "specified bad act"? 10:29:18

6 Q (BY MR. JUDAH) Yeah. 10:29:23

7 MR. TAKASHIMA: Objection, beyond the 10:29:25

8 scope; and objection, form. 10:29:25

9 A My recollection is that -- that defined 10:29:30

10 term came into being just because corporate lawyers 10:29:32

11 who were discussing the construct of the 10:29:36

12 Indemnification Agreement were using kind of common 10:29:39

13 vernacular, which then became a defined term. 10:29:43

14 Q (BY MR. JUDAH) Have you ever worked on any 10:29:46

15 merger and/or acquisition agreements, other than the 10:29:49

16 one that was used in this Ottomotto and Uber deal? 10:29:54

17 MR. TAKASHIMA: Objection, form; and 10:30:02

18 objection, beyond the scope. 10:30:03

19 A So I'm trying to understand your question, 10:30:05

20 so let me make sure I have it right. 10:30:10

21 Is your question whether I worked on other 10:30:11

22 merger transactions other than this -- the Ottomotto 10:30:13

23 and Otto Trucking transaction with Uber? 10:30:15

24 Q (BY MR. JUDAH) Yes. 10:30:17

25 A Yes. 10:30:18

1 MR. TAKASHIMA: Objection to form; and 10:30:18
2 objection, beyond the scope. Give me second to 10:30:19
3 object -- 10:30:21
4 A Okay. 10:30:21
5 MR. TAKASHIMA: -- before you answer. 10:30:22
6 Q (BY MR. JUDAH) How many other mergers and 10:30:23
7 core acquisition transactions have you worked on? 10:30:25
8 MR. TAKASHIMA: Objection, form; 10:30:28
9 objection, beyond the scope. 10:30:28
10 A I don't know the number offhand. But over 10:30:32
11 nine years, the majority of which were spent working 10:30:37
12 on M&A transactions and probably worked on at least 10:30:41
13 a handful each year. 10:30:45
14 Q (BY MR. JUDAH) Did -- have any of the 10:30:48
15 other merger and acquisition transactions you have 10:30:50
16 ever worked on included a provision with a defined 10:30:52
17 term for "bad acts"? 10:30:57
18 MR. TAKASHIMA: Objection, beyond the 10:31:00
19 scope. 10:31:00
20 A I don't recall if that specific defined 10:31:09
21 term was used in any other transactions I worked on. 10:31:13
22 But every M&A transaction has indemnification 10:31:17
23 obligations of some kind, so it's possible. 10:31:22
24 Q (BY MR. JUDAH) But the answer to my 10:31:26
25 question is: No, you can't think of any other 10:31:28

1 merger and/or acquisition transactions you have 10:31:32

2 worked on that had a defined term for bad acts? 10:31:33

3 MR. TAKASHIMA: Objection, form; 10:31:38

4 objection, beyond the scope. 10:31:38

5 A My answer is that I cannot recall whether 10:31:42

6 any other merger transactions I worked on in the 10:31:44

7 past may have included a specific defined term or 10:31:48

8 not. I don't recall one that did offhand, but that 10:31:53

9 doesn't mean none did. 10:31:56

10 Q (BY MR. JUDAH) You just can't think of any 10:31:59

11 others sitting here today? 10:32:01

12 MR. TAKASHIMA: Objection, form; 10:32:03

13 objection, beyond the scope. 10:32:03

14 A Sitting here today, it would be difficult 10:32:06

15 for me to recall specific and deal-specific defined 10:32:07

16 terms that were in past merger agreements or merger 10:32:12

17 transactions that I worked on, so I don't recall 10:32:16

18 any. 10:32:19

19 Q (BY MR. JUDAH) So directing your attention 10:32:19

20 to Mr. Glickman's February 5 e-mail, beneath the 10:32:20

21 section here that says "List of Specified Bad 10:32:25

22 Acts," it says, Specified bad acts will be defined 10:32:29

23 to mean the following: [Actual exhaustive list to 10:32:33

24 be provided by Unicorn by Monday]. 10:32:37

25 Do you see that? 10:32:40

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1	A	Yes.	10:32:40
2	Q	"Unicorn" refers to Uber; is that right?	10:32:41
3		MR. TAKASHIMA: Objection, beyond the	10:32:44
4		scope.	10:32:44
5	A	Yes.	10:32:46
6	Q	(BY MR. JUDAH) So according to	10:32:47
7		Mr. Glickman's February 5 e-mail, the origin of the	10:32:48
8		"Exhaustive List of Specified Bad Acts" was going to	10:32:51
9		come from Uber?	10:32:55
10		MR. TAKASHIMA: Objection to form;	10:32:58
11		objection, beyond the scope.	10:32:58
12	A	So when you're negotiating an M&A	10:33:00
13		transaction, the initial draft of any document will	10:33:02
14		come from one party or the other. And based on this	10:33:06
15		e-mail, Andrew is indicating that Uber was providing	10:33:10
16		the initial draft.	10:33:14
17	Q	(BY MR. JUDAH) And -- and that would	10:33:18
18		include the initial draft of the "Exhaustive List of	10:33:19
19		the Specified Bad Acts"?	10:33:23
20		MR. TAKASHIMA: Objection, beyond the	10:33:25
21		scope.	10:33:25
22	A	Based on --	10:33:28
23		MS. EWINS: Objection, form.	10:33:30
24	A	-- based on this agreement, Andrew was	10:33:31
25		indicating that the initial draft of the "specified	10:33:35

1 bad acts" defined term definition would be provided 10:33:41
2 by Uber. 10:33:46

3 Q (BY MR. JUDAH) I direct your attention 10:33:47
4 further down the e-mail. Mr. Glickman writes 10:33:49
5 "Example list of Specified Bad Acts." 10:33:50
6 And then there's a section with some 10:33:53
7 bullets. The section is called "IP." 10:33:56
8 Do you see that? 10:33:58

9 A Yes. 10:34:00

10 Q So the first -- the bullets are indicated 10:34:01
11 by question marks, but I -- I suspect that's a 10:34:04
12 formatting issue. 10:34:07

13 But -- so the first of these bullets says 10:34:08
14 "Taking of hardware of ACME." 10:34:10
15 Do you see that? 10:34:14

16 A Yes. 10:34:14

17 Q "ACME" refers to Google, correct? 10:34:14
18 MR. TAKASHIMA: Objection, beyond the 10:34:17
19 scope. 10:34:17

20 A ACME would have referred to any former 10:34:21
21 employer of any of the diligenced employees, which 10:34:24
22 could be Google, in the case of people who had 10:34:28
23 worked at Google. 10:34:31

24 Q (BY MR. JUDAH) Other than Google, what 10:34:33
25 were the former employers of the diligenced 10:34:35

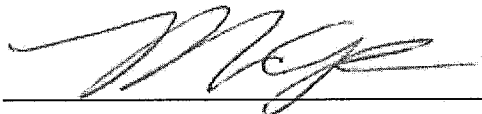
1 I, MARY J. GOFF, CSR No. 13427, Certified
2 Shorthand Reporter of the State of California,
3 certify;

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth, at
6 which time the witness declared under penalty of
7 perjury; that the testimony of the witness and all
8 objections made at the time of the examination were
9 recorded stenographically by me and were thereafter
10 transcribed under my direction and supervision; that
11 the foregoing is a full, true, and correct
12 transcript of my shorthand notes so taken and of the
13 testimony so given;

14 That before completion of the deposition,
15 review of the transcript () was (XX) was not
16 requested: () that the witness has failed or
17 refused to approve the transcript.

18 I further certify that I am not financially
19 interested in the action, and I am not a relative or
20 employee of any attorney of the parties, nor of any
21 of the parties.

22 I declare under penalty of perjury under the
23 laws of California that the foregoing is true and
24 correct, dated this 24th day of August 2017.
25



MARY J. GOFF, CSR No. 13427